

LAW OFFICES
JOHN S. WALLENSTEIN
1100 Franklin Avenue, Suite 305
Garden City, New York 11530
(516) 742-5600 Fax (516) 742-5040
Email: JSWallensteinEsq@outlook.com

April 20, 2021


The application is granted to the extent that the Court grants Mr. Gaines's counsel permission to attend the pre-trial conference scheduled in this matter for April 23, 2021.

BY ECF

Hon. Nelson S. Román
United States District Court, SDNY
300 Quarropas Street
White Plains, New York 10601

Dated: 4/22/2021
White Plains, NY

SO ORDERED:


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

Re: United States v. James Gaines & James Bowen
Docket # 18 CR 205 (NSR)

Dear Judge Román,

As you know, I represent James Gaines in this case. Mr. Gaines is now on supervised release and resides in Virginia. He has been subpoenaed to testify at the upcoming trial of Mr. Bowen, and he intends to invoke his 5th Amendment privilege. The Court has previously ruled (ECF # 93) that his invocation must be as to each question, and that Your Honor will rule accordingly.

Since any such rulings would have to be argued outside the presence of the jury, and given that with COVID precautions in place, sidebars are not permitted, I respectfully request that the Court conduct a pretrial hearing, by videoconference, at which both the government and defense counsel can put questions to Mr. Gaines, I can advise him as to his invocation of the privilege, and the Court can rule on which questions, if any, must be answered at trial.

Proceeding in this fashion will save considerable time and effort at trial, as it would avoid having the jury removed from the courtroom after each question so the privilege issue can be decided. The record would be clear, any objections preserved, and Mr. Gaines can testify without interruption.

If the Court is disinclined to conduct a hearing of this nature remotely, I respectfully suggest that as an alternative the Court may do so outside the jury's presence at an appropriate time, on the day Mr. Gaines testifies, in order to avoid a protracted and logistically difficult examination.

MEMO ENDORSED

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An extended trip to New York would be a great hardship for my client, as his job would be in jeopardy and he would not be paid for his time. The Government will pay his travel expenses, but they cannot make up for his lost income, or compel his employer to continue the employment.

I respectfully request the Court's permission to attend the telephonic pretrial conference scheduled for this Friday, and to address this issue thereat.

Thank you for your courtesy and consideration.

Respectfully yours,

John S. Wallenstein
JOHN S. WALLENSTEIN

JSW/ljs

cc: Michael Burke, Esq. (by ECF)
AUSA Ben Gianforti (by ECF)
AUSA Michael Maimin (by ECF)